

**In re: SAULSBURY ENTERPRISES, AN UNINCORPORATED  
ASSOCIATION; AND ROBERT J. SAULSBURY, AN INDIVIDUAL.  
AMAA Docket No. 94-0002.  
Decision and Order on Remand filed February 14, 2000.**

**Raisins – Civil penalties – Eighth Amendment – Excessive fines clause.**

The Judicial Officer concluded that a \$205,000 civil penalty assessed against Respondents was not excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution. The Judicial Officer had assessed a \$219,000 civil penalty against Respondents in *In re Saulsbury Enterprises*, 55 Agric. Dec. 6 (1996), *aff'd in part, denied in part & remanded*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999). Respondents filed a Complaint for Review of the Decision and Order in the United States District Court for the Eastern District of California, which affirmed the Decision and Order, with the exception of \$14,000 of the civil penalty. However, the Court concluded that the civil penalty provision in section 8c(14)(B) of the Agricultural Marketing Agreement Act (7 U.S.C. § 608c(14)(B)) was subject to the Excessive Fines Clause and remanded the proceeding to the Judicial Officer for further findings concerning whether the civil penalty assessed in the Decision and Order, as modified by the Court, was excessive within the meaning of the Excessive Fines Clause. The Judicial Officer found: (1) Respondents' 205 violations of the Raisin Order over almost a 5-year period were grave violations of the Raisin Order; (2) Respondents were highly culpable for the violations; (3) Respondents' violations harmed the Raisin Administrative Committee, handlers subject to the Raisin Order, the United States government, consumers of raisins produced from grapes grown in California, the Secretary of Agriculture's implementation of the policies expressly stated in the AMAA, and the integrity of the Raisin Order; (4) the civil penalty assessed against Respondents was authorized by the AMAA and was approximately 10 per centum of the maximum civil penalty that could have been assessed against Respondents; (5) the civil penalty assessed against Respondents was consistent with civil penalties assessed in similar cases; (6) Respondents had the ability to pay the assessed civil penalty; and (7) Respondents' financial condition may be significantly damaged by the payment of the civil penalty, but the civil penalty was not so disproportionate to Respondents' circumstances that there was no realistic expectation that Respondents would be able to pay the civil penalty.

Colleen A. Carroll, for Complainant.

Brian C. Leighton, Fresno, California, for Respondents.

Initial decision issued by James W. Hunt, Administrative Law Judge.

*Decision and Order issued by William G. Jenson, Judicial Officer.*

The Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this proceeding under the Agricultural Marketing Agreement Act of 1937, as amended [hereinafter the AMAA]; the Marketing Order Regulating the Handling of Raisins Produced From Grapes Grown in California [hereinafter the Raisin Order] (7 C.F.R. pt. 989); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130-.151) by filing a Complaint on May 23, 1994.

The Complaint alleges that Saulsbury Enterprises and Robert J. Saulsbury [hereinafter Respondents] violated sections 989.58, 989.59, 989.66, 989.73, 989.80, 989.241, 989.242, and 989.243 of the Raisin Order (7 C.F.R. §§ 989.58, .59, .66, .73, .80, .241-.243). On June 13, 1994, Respondents filed an Answer denying the material allegations of the Complaint.

Administrative Law Judge James W. Hunt [hereinafter the ALJ] conducted a 2-day hearing. Colleen A. Carroll represented Complainant and Brian C. Leighton represented Respondents. The parties submitted post-hearing briefs, and on June 27, 1995, the ALJ issued an initial decision in which the ALJ found Respondents shipped approximately 2,247,879 pounds of raisins to Canada without having the raisins inspected and failed to file 20 forms<sup>1</sup> with the Raisin Administrative Committee. The ALJ concluded that Respondents violated section 989.59 of the Raisin Order (7 C.F.R. § 989.59) by shipping off-grade or failing raisins during the 1988-1989, 1989-1990, and 1990-1991 crop years and assessed Respondents, jointly and severally, a \$3,000 civil penalty.

On August 29, 1995, Complainant appealed to the Judicial Officer; on September 26, 1995, Respondents filed a response to Complainant's appeal petition; and on October 2, 1995, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for decision.

On May 7, 1996, I issued a Decision and Order concluding that: (1) during crop years 1988-1989, 1989-1990, and 1990-1991, Respondents violated section 989.58 of the Raisin Order (7 C.F.R. § 989.58) on 60 occasions by receiving natural condition raisins without having them inspected; (2) during crop years 1988-1989, 1989-1990, and 1990-1991, Respondents violated section 989.59 of the Raisin Order (7 C.F.R. § 989.59) on 60 occasions by shipping natural condition raisins without having them inspected; (3) from October 26, 1988, to April 26, 1990, Respondents violated sections 989.66 and 989.241 of the Raisin Order (7 C.F.R. §§ 989.66, .241) by failing to hold raisins in reserve for the 1988-1989 crop year; (4) from October 25, 1989, to July 12, 1991, Respondents violated 989.66 and 989.242 of the Raisin Order (7 C.F.R. §§ 989.66, .242) by failing to hold raisins in reserve for the 1989-1990 crop year; (5) from October 31, 1990, to June 15, 1992, Respondents violated sections 989.66 and 989.243 of the Raisin Order (7 C.F.R. §§ 989.66, .243) by failing to hold raisins in reserve for the 1990-1991 crop year; (6) beginning in 1988, Respondents violated 989.73 of the Raisin Order (7 C.F.R. § 989.73) by failing to submit 40 reports to the Raisin Administrative Committee for crop years 1988-1989, 1989-1990, and 1990-1991; and (7) Respondents violated 989.80 of the Raisin Order (7 C.F.R. § 989.80) by failing to pay \$557.33 in assessments for raisins handled in the 1988-1989 crop year, \$594.68 in assessments for raisins handled in the 1989-1990 crop year, and \$512.29 in assessments for raisins handled in the 1990-1991 crop year. Based on these violations, I assessed

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<sup>1</sup>Specifically, the ALJ found that during the 1988-1989, 1989-1990, and 1990-1991 crop years, Respondents failed to file with the Raisin Administrative Committee: (1) three RAC-5 Forms, giving notice of the intention to handle raisins and making application for inspection; (2) eight RAC-30 Forms, reporting off-grade raisins; (3) three RAC-32 Forms, reporting disposition of off-grade or failing raisins or residual material; (4) three RAC-35 Forms, applying to sell, ship, or dispose of raisins or raisin residual materials; and (5) three RAC-51 Forms, reporting inventory of off-grade raisins by variety.

Respondents, jointly and severally, a civil penalty of \$219,000 and ordered Respondents to pay the Raisin Administrative Committee \$1,673.30 in assessments for the 1988-1989, 1989-1990, and 1990-1991 crop years. *In re Saulsbury Enterprises*, 55 Agric. Dec. 6 (1996), *aff'd in part, denied in part & remanded*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999).

Respondents filed a petition for reconsideration of the May 7, 1996, Decision and Order, which petition I denied. *In re Saulsbury Enterprises*, 56 Agric. Dec. 82 (1997) (Order Denying Pet. for Recons.).

Respondents filed a Complaint for Review of the May 7, 1996, Decision and Order in the United States District Court for the Eastern District of California. Thereafter, the parties filed cross-motions for summary judgment, which the Court granted in part and denied in part. *Saulsbury Enterprises v. United States Dep't of Agric.*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999) (Order Granting in Part and Denying in Part Cross-Motions for Summary Judgment and Remanding Matter to USDA).

The Court affirmed the Judicial Officer's May 7, 1996, Decision and Order, with the exception of \$14,000 of the civil penalty.<sup>2</sup> However, the Court concluded that the civil penalty provision in section 8c(14)(B) of the AMAA (7 U.S.C. § 608c(14)(B)) is subject to the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and remanded the proceeding to the United States Department of Agriculture [hereinafter USDA] for findings concerning whether the civil penalty assessed in the May 7, 1996, Decision and Order, as modified by the Court, is excessive within the meaning of the Excessive Fines Clause. The Court states that it retains jurisdiction of the action pending USDA findings and instructs that the parties renew their motions for summary judgment before the Court on the issue of whether the civil penalty assessed against Respondents is or is not excessive within the meaning of the Excessive Fines Clause, once the findings are final. *Saulsbury Enterprises v. United States Dep't of Agric.*, *supra*, slip op. at 1-2, 33-41, 52.

In a telephone conference with Respondents' counsel and Complainant's counsel, which I conducted on August 25, 1999, each expressed an interest in the opportunity to file a brief with supporting affidavits and attachments and a reply brief concerning the issue on remand. On August 26, 1999, I issued an Informal Order for Briefs Regarding Remand setting forth a schedule for briefs and supporting affidavits and attachments limited to the issue of whether the \$205,000 civil penalty assessed against Respondents is or is not excessive within the meaning

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<sup>2</sup>In *In re Saulsbury Enterprises*, *supra*, I found that Respondents failed to submit 40 reports to the Raisin Administrative Committee. Fourteen of these reports concern off-grade raisins. The Court concluded that I could not assess a civil penalty against Respondents for failing to submit reports concerning off-grade raisins, given my conclusion that Respondents' raisins were standard raisins. *Saulsbury Enterprises v. United States Dep't of Agric.*, *supra*, slip op. at 48.

of the Excessive Fines Clause of the Eighth Amendment. On November 5, 1999, Respondents filed Respondents' Brief Re Excessive Fines Clause of the Eighth Amendment to the United [States] Constitution [hereinafter Respondents' Remand Brief]; on November 8, 1999, Complainant filed Complainant's Brief Regarding Remand; Declaration of Terry W. Kaiser; and Declaration of Terry Wayne Stark [hereinafter Complainant's Remand Brief]; on December 1, 1999, Respondents filed Respondents' Reply to Complainant's Brief Re Remand; Objections to Declarations of Terry Kaiser and Terry Stark [hereinafter Respondents' Remand Reply Brief]; on December 6, 1999, Complainant filed Complainant's Reply to Respondents' Brief Re Excessive Fines Clause of the Eighth Amendment to the United [Sic] Constitution [hereinafter Complainant's Remand Reply Brief]; and on December 7, 1999, the Hearing Clerk transmitted the record of the proceeding to me for a decision on remand.<sup>3</sup>

#### **PERTINENT CONSTITUTIONAL PROVISION**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

The only issue addressed in this Decision and Order on Remand is whether the civil penalty, which I assessed in the May 7, 1996, Decision and Order, as modified by the United States District Court for the Eastern District of California, is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment.<sup>4</sup>

Citing *United States v. Bajakajian*, 524 U.S. 321 (1998), and *United States v. \$273,969.04 U.S. Currency*, 164 F.3d 462 (9<sup>th</sup> Cir. 1999), the United States District Court for the Eastern District of California instructs that a civil penalty is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment if the civil penalty is grossly disproportional to the gravity of a respondent's violation.

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<sup>3</sup>On January 5, 2000, Respondents filed Declaration of Brian C. Leighton, Attorney for Respondents, Re Death of The Respondent [hereinafter Motion to Dismiss], stating that Respondent Robert J. Saulsbury died on January 3, 2000, and requesting that the proceeding be dismissed. On February 9, 2000, Complainant filed Complainant's Response to Respondents' Motion to Dismiss opposing Respondents' Motion to Dismiss. On February 14, 2000, I denied Respondents' Motion to Dismiss stating that I have no jurisdiction to dismiss the proceeding (Ruling Denying Respondents' Motion to Dismiss).

<sup>4</sup>Respondents request a hearing "to develop the evidence" that the product that they shipped to Canada "was never sold as raisins" (Respondents' Remand Reply Brief at 4). I find that the identity of the product is not an issue in this Decision and Order on Remand. Therefore, Respondents' request, in Respondents' Remand Reply Brief, at 4, to reopen the hearing, is denied.

The Court points out that I “made no findings specifically addressed to the contention that civil penalties sought and obtained by [Complainant] were or were not excessive as that term has been defined by the Supreme Court.” *Saulsbury Enterprises v. United States Dep’t of Agric.*, *supra*, slip op. at 41.

Complainant contends that, in order to determine whether a civil penalty is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment, the factors that should be examined are: (1) the gravity of the offense and whether the civil penalty is proportionate to the offense; (2) penalties imposed for like offenses in the same and other jurisdictions; (3) the intent of the legislation authorizing the assessment of the civil penalty; (4) the respondent’s ability to pay the civil penalty; and (5) the intent of the violator (Complainant’s Remand Brief at 2). Complainant contends that the civil penalty assessed against Respondents is not excessive within the meaning of the Excessive Fines Clause and requests that I issue an order on remand assessing Respondents a \$205,000 civil penalty and ordering Respondents to pay the Raisin Administrative Committee \$1,673.30 in assessments for crop years 1988-1989, 1989-1990, and 1990-1991 (Complainant’s Remand Brief at 2, 7-8).

Respondents contend that, in order to determine whether a civil penalty is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment, the factors that should be examined are: (1) the harm the respondent’s violations caused the industry, competitors, the government, and others; (2) the respondent’s ability to pay the civil penalty; (3) the burden the civil penalty would impose on the respondent and the respondent’s dependents; (4) the culpability of the respondent, rather than the gravity of the offense in the abstract; (5) the respondent’s health; and (6) the respondent’s financial problems (Respondents’ Remand Brief at 1-6). Respondents contend that the civil penalty assessed against Respondents is excessive within the meaning of the Excessive Fines Clause and request that I issue an order on remand assessing Respondents a civil penalty and ordering Respondents to pay the Raisin Administrative Committee assessments, both totaling no more than \$20,000<sup>5</sup> (Respondents’ Remand Reply Brief at 7).<sup>6</sup>

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<sup>5</sup>In Respondents’ Remand Brief, at 6-7, Respondents request that I issue an order on remand assessing Respondents a civil penalty of less than \$15,000. I infer that Respondents abandoned the request in Respondents’ Remand Brief and now request the order on remand set forth in Respondents’ Remand Reply Brief, at 7.

<sup>6</sup>Respondents request that, if the civil penalty and assessments which they are ordered to pay in this Decision and Order on Remand is not \$20,000 or less, a hearing be conducted regarding: “(1) Saulsbury’s ability to pay; (2) the harm, if any, to the marketing order and/or Saulsbury’s competitors; (3) . . . whether or not the product shipped to Canada [was] ever sold as raisins as opposed to distillery; [and] (4) the advantage, if any, . . . Saulsbury received from the alleged violations of the marketing order” (Respondents’ Remand Reply Brief at 7). The parties have thoroughly briefed the issue in this proceeding, and I find no basis for reopening the hearing. Therefore, Respondents’ request, in Respondents’ Remand Reply Brief, at 7, to reopen the hearing, is denied.

### **Respondents Violations of the Raisin Order**

Respondents committed the following violations of the Raisin Order: (1) Respondents violated section 989.58 of the Raisin Order on 19 occasions during the 1988-1989 crop year by receiving natural condition raisins without having them inspected; (2) Respondents violated section 989.58 of the Raisin Order on 24 occasions during the 1989-1990 crop year by receiving natural condition raisins without having them inspected; (3) Respondents violated section 989.58 of the Raisin Order on 17 occasions during the 1990-1991 crop year by receiving natural condition raisins without having them inspected; (4) Respondents violated section 989.59 of the Raisin Order on 19 occasions during the 1988-1989 crop year by shipping natural condition raisins without having them inspected; (5) Respondents violated section 989.59 of the Raisin Order on 24 occasions during the 1989-1990 crop year by shipping natural condition raisins without having them inspected; (6) Respondents violated section 989.59 of the Raisin Order on 17 occasions during the 1990-1991 crop year by shipping natural condition raisins without having them inspected; (7) from October 26, 1988, to April 26, 1990, Respondents failed to hold raisins in reserve for the 1988-1989 crop year, in violation of sections 989.66 and 989.241 of the Raisin Order; (8) from October 25, 1989, to July 12, 1991, Respondents failed to hold raisins in reserve for the 1989-1990 crop year, in violation of sections 989.66 and 989.242 of the Raisin Order; (9) from October 31, 1990, to June 15, 1992, Respondents failed to hold raisins in reserve for the 1990-1991 crop year, in violation of sections 989.66 and 989.243 of the Raisin Order; (10) beginning in 1988, Respondents violated section 989.73 of the Raisin Order by failing to submit 26 reports to the RAC for crop years 1988-1989, 1989-1990, and 1990-1991; and (11) Respondents violated section 989.80 of the Raisin Order by failing to pay \$557.33 in assessments for raisins handled in the 1988-1989 crop year, \$594.68 in assessments for raisins handled in the 1989-1990 crop year, and \$521.29 in assessments for raisins handled in the 1990-1991 crop year.

### **Respondents' Culpability**

The culpability of the offender must be examined to determine whether a civil penalty violates the excessive fines clause. *United States v. 3814 NW Thurman Street*, 164 F.3d 1191, 1197 (9<sup>th</sup> Cir. 1999). Respondents characterize their culpability as "benign" (Respondents' Remand Brief at 6). Complainant describes Respondents' violations as intentional, deliberate, and motivated by greed, and state that Respondents committed the violations to benefit Respondents at the expense of fellow handlers (Complainant's Remand Brief at 4-5; Complainant's Remand Reply Brief at 5-6).

Respondents' culpability was not benign, as Respondents contend. Instead, Respondents knew of the Raisin Order requirements, Respondents knew that they

were not complying with the Raisin Order, and Respondents engaged in a purposeful scheme to evade the requirements of the Raisin Order. Respondents' violations of the Raisin Order were motivated by profit; it was much more lucrative for Respondents to sell all of their raisins immediately, rather than to withhold a portion of their crop for 2 years in compliance with the Raisin Order. *In re Saulsbury Enterprises, supra*, 55 Agric. Dec. at 49, 52-54.

### **Gravity of Respondents' Violations**

In *United States v. Bajakajian, supra*, Bajakajian attempted to leave the United States without reporting, as required by 31 U.S.C. § 5316(a)(1)(A), that he was transporting more than \$10,000. In connection with the Supreme Court's examination of the gravity of Bajakajian's violation, the Court stated that the statute requiring persons to report the removal of currency from the United States was principally designed to prevent money laundering, drug trafficking, and tax evasion, but that Bajakajian's violation was solely a failure to report currency and unrelated to any other illegal activities. Hence the gravity of Bajakajian's offense was not great and the forfeiture of all of the currency, which he attempted to remove from the United States, as directed by 18 U.S.C. § 982(a)(1), violates the Excessive Fines Clause. *Bajakajian, supra*, 524 U.S. at 337.

Unlike the situation in *Bajakajian*, the Raisin Order was principally designed to prevent the very activities in which Respondents engaged, Respondents committed 205 violations of the Raisin Order over a period of almost 5 years, Respondents' violations thwart the purposes of the Raisin Order, and Respondents fit into the class of persons for whom the Raisin Order was designed. Respondents' violations are intentional and serious. *See generally In re Saulsbury Enterprises, Inc., supra*, 55 Agric. Dec. at 41-46, 50-58.

### **Harm Caused by Respondents' Violations**

Respondents contend that their violations of the Raisin Order did not harm anyone in the industry and that the only harm to the government was Respondents' failure to pay \$1,673.30 in assessments during the 1988-1989, 1989-1990, and 1990-1991 crop years (Respondents' Remand Brief at 4, 6). Complainant contends that the government has an interest in the integrity of the Raisin Order and Respondents' violations threaten the integrity of the Raisin Order, and, by extension, harm other handlers who comply with the Raisin Order (Complainant's Remand Brief at 4-5; Complainant's Remand Reply Brief at 4-5). Further, Complainant contends that Respondents harmed the government by causing the government to expend funds to investigate and prosecute Respondents for their violations (Complainant's Remand Reply Brief at 4). Complainant states that USDA's investigative cost alone was \$76,193.08 (Complainant's Remand Brief,

Affidavit of Terry W. Kaiser ¶ 5). Respondents state that the investigative costs cited by Complainant are salaries and benefits paid to the individuals who investigated Respondents and that these individuals would have been paid whether they were investigating respondents “or twiddling their thumbs in their office” (Respondents’ Remand Reply Brief at 5).

I agree with Respondents that they have harmed the Raisin Administrative Committee by not paying \$1,673.30 in assessments during the 1988-1989, 1989-1990, and 1990-1991 crop years. However, I also find Respondents’ violations harmed the government by requiring the government to expend funds to investigate Respondents’ violations and prosecute Respondents. I agree with Respondents that, as a practical matter, salaries and benefits paid to those government employees who investigated and prosecuted Respondents would be paid even if Respondents had not violated the Raisin Order. However, if Respondents and other similarly situated persons did not violate marketing orders, the number of government employees necessary to obtain compliance with marketing orders could be reduced. Further, there are expenses, such as travel expenses, that are incurred as a result of an investigation and subsequent prosecution that would not be incurred if those government employees were not required to conduct the investigation and subsequent prosecution.

Moreover, Respondents’ violations harm other handlers subject to the Raisin Order and consumers of raisins produced from grapes grown in California and thwart the Secretary of Agriculture’s implementation of Congressional policy expressly stated in section 2(3) and 2(4) of the AMAA, as follows:

**§ 602. Declaration of policy; establishment of price basing period; marketing standards; orderly supply flow; circumstances for continued regulation**

It is declared to be the policy of Congress—

. . . .

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such production research, marketing research, and development projects provided in section 608c(6)(I) of this title, such container and pack requirements provided in section 608c(6)(H) of this title such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 608c(2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.

(4) Through the exercise of the powers conferred upon the Secretary of



Agriculture under this chapter, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 608c(2) of this title as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

7 U.S.C. § 602(3)-(4) (footnote omitted).

Finally, the most serious harm caused by Respondents' violations is the negative effect of the violations on the integrity of the Raisin Order. The legislative history applicable to the AMAA indicates that the harm which the civil penalty provision in the AMAA is designed to deter is harm to the integrity of the marketing order program,<sup>7</sup> as follows:

#### *Marketing order penalties*

Under current law, any handler who violates a marketing order regulation is subject to a criminal fine of not less than \$50 or more than \$5,000 for each violation and each day during which the violation occurs. Such violations are referred by the Department of Agriculture to the U.S. Attorneys Office of the Department of Justice for prosecution. Only the U.S. Attorneys Office may enforce this section and take action against violators of marketing orders.

This criminal prosecution procedure, however, is both time-consuming and cumbersome. In addition, the U.S. Attorneys offices handle an enormous number and variety of cases on behalf of all Federal Government agencies. Because the Offices cannot effectively handle the volume of cases that they now receive, many regulatory violations are often not pursued.

In many cases, the U.S. Attorneys Offices have not taken any action against reported marketing order violations. In 1986, for example, out of 52 investigations of alleged violations of fruit, vegetable, and specialty crop marketing orders, only 11 were resolved by the U.S. Attorneys Offices.

To maintain the integrity of the marketing order program, it is necessary that civil penalties (imposed through administrative procedures) be used as an enforcement tool to respond to regulatory violations in addition to the

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<sup>7</sup>See also *Balice v. United States Dep't of Agric.*, No. 98-16766 (9<sup>th</sup> Cir. Feb. 8, 2000) (stating that in 1987, Congress amended 7 U.S.C. § 608c(14)(B) out of concern for the integrity of the market order program).

criminal enforcement procedures currently provided. Furthermore, administrative civil penalties will ensure that regulatory violations of marketing orders will be dealt with in a timely, efficient, and effective manner.

Thus, section 1051 contains a provision that gives the Department of Agriculture the authority to initiate an administrative action to assess a civil penalty of not more than \$1000 for each violation against any handler who violates a marketing order. Each day during which a violation continues would be considered a separate violation.

The Secretary would be required to give notice and an opportunity for an agency hearing before assessing a civil penalty. A penalty order would be reviewable in the U.S. district court in any district in which the handler subject to the order is an inhabitant, or has his principal place of business. The bill does not eliminate the authority to seek a criminal fine for a marketing order violation, where appropriate. It simply will authorize the Secretary of Agriculture to seek an administrative civil penalty when circumstances indicate that it would be an effective regulatory enforcement tool.

H. REP. NO. 391(I), 100th Cong., 1st. Sess. 29-30, *reprinted in* 1987 U.S.C.C.A.N. 2313-1, 2313-29-30.

The importance of compliance by all handlers with marketing order programs was explained by the Supreme Court in connection with a milk marketing order, as follows:

The success of the operation of such Congressionally authorized milk control must depend on the efficiency of its administration. Promptness of compliance by those subject to the scheme is the presupposition of Order No. 41. Thus, definite monthly deadlines are fixed by the Order for every step in the program. In large measure, the success of this scheme revolves around a "producers" fund which is solvent and to which all contribute in accordance with a formula equitably determined and of uniform applicability. Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults by some handlers may work unfairness to others, encourage wider non-compliance, and engender those subtle forces of doubt and distrust which so readily dislocate delicate economic arrangements.

*United States v. Ruzicka*, 329 U.S. 287, 293 (1946).

Although *Ruzicka* concerns a milk marketing order, the same reasoning is

applicable to the Raisin Order. Respondents' 205 willful violations of the Raisin Order over almost a 5-year period are serious and threaten the integrity of the Raisin Order.

### **Legislatively Authorized Penalties**

Respondents contend that the \$205,000 civil penalty assessed against them is the maximum civil penalty allowed under section 8c(14)(B) of the AMAA (7 U.S.C. § 608c(14)(B)) (Respondents' Remand Brief at 4). Complainant contends that Respondents could have been assessed a civil penalty of more than \$1,914,000 (Complainant's Remand Brief at 3; Complainant's Remand Reply Brief at 2).

Section 8c(14)(B) of the AMAA provides that the Secretary of Agriculture may assess a civil penalty for violations of an order issued under the AMAA, as follows:

#### **§ 608c. Orders regulating handling of commodity**

....

#### **(14) Violation of order; penalty**

....

(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not exceeding \$1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation, except that if the Secretary finds that a petition pursuant to paragraph (15) was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date on which the handlers' petition was filed with the Secretary, and the date on which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15). The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

7 U.S.C. § 608c(14)(B).

Respondents committed 205 violations of the Raisin Order. Respondents' violations of the reserve requirements in the Raisin Order continued for 1,768 days, and Respondents' violations of the requirement to pay assessments to the Raisin Administrative Committee continued from the date the assessments were due to at least the date the Complaint was filed. Therefore, under 7 U.S.C. § 608c(14)(B), Respondents could have been assessed a civil penalty of at least \$2,000,000. The Supreme Court of the United States and the United States Court of Appeals for the Ninth Circuit have noted that judgments about the appropriate punishment for an offense belong, in the first instance, to the legislature in determining whether a penalty is grossly disproportionate to the gravity of the offense for which it is imposed.<sup>8</sup>

Respondents, citing *Bajakajian*, also contend that I must examine the "maximum prison time that could be imposed in determining whether or . . . not the fine is disproportionate to the offense[.]" and Respondents correctly point out that the criminal penalty provision in the AMAA does not provide for imprisonment for violations of marketing orders issued under the AMAA (Respondents' Remand Brief at 3, 6). However, nothing in *Bajakajian* suggests that the \$205,000 civil penalty assessed against Respondents is disproportionate to Respondents' violations merely because the criminal penalty provision in the AMAA does not provide for imprisonment. Instead, the Supreme Court states that "[i]n considering an offense's gravity, the other penalties that the Legislature has authorized are certainly relevant evidence." *United States v. Bajakajian*, *supra*, 524 U.S. at 339 n.14.

Section 8c(14)(A) of the AMAA provides for a fine after criminal conviction, as follows:

**§ 608c. Orders regulating handling of commodity**

....

**(14) Violation of order; penalty**

(A) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order shall, on conviction, be fined not less than \$50 or more than \$5,000 for each such violation, and each day during which such violation continues shall be deemed a separate violation. If the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between

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<sup>8</sup>*United States v. Bajakajian*, 524 U.S. 321, 336 (1998); *Solem v. Helm*, 463 U.S. 277, 290 (1983); *Balice v. United States Dep't of Agric.*, No. 98-16766 (9<sup>th</sup> Cir. Feb. 8, 2000).

the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15) of this section.

7 U.S.C. § 608c(14)(A).

Thus, Congress provides for a maximum fine after criminal conviction for a violation of a marketing order issued under the AMAA that is five times greater than the maximum civil penalty that could be imposed under the AMAA. Had the United States instituted a criminal prosecution against Respondents and had Respondents been convicted of each of the violations, which I found and the United States District Court for the Eastern District of California affirmed, the minimum fine that a court could impose on Respondents would be approximately \$100,000 and the maximum fine would be approximately \$10,000,000. Congress' provision for a maximum fine after criminal conviction that is five times greater than the maximum civil penalty that could be imposed indicates that Congress considers violations of marketing orders issued under the AMAA as potentially very grave.

#### **Civil Penalties in Other AMAA Proceedings**

Complainant contends the \$205,000 civil penalty assessed against Respondents is consistent with civil penalties imposed in other AMAA disciplinary cases. As examples, Complainant cites two cases<sup>9</sup> to support Complainant's contention. (Complainant's Remand Brief at 6.) Respondents concede that the civil penalty assessed in this proceeding is consistent with the civil penalties assessed in *In re Daniel Strebin* and *In re Onofrio Calabrese*. Respondents correctly point out that the respondents in *Strebin* did not seek judicial review. However, the failure of the respondents in *Strebin* to seek judicial review is not relevant to whether the civil penalty assessed in this proceeding is consistent with the civil penalty assessed in *In re Daniel Strebin*. Respondents also contend that *Calabrese* is still pending before the United States Court of Appeals for the Ninth Circuit. However, since Respondents' filings in this proceeding, the Ninth Circuit has affirmed *Calabrese*. *Balice v. United States Dep't of Agric.*, No. 98-16766 (9<sup>th</sup> Cir. Feb. 8, 2000). In so doing, the Ninth Circuit rejected the appellant's contention that a \$225,500 civil penalty assessed by the Judicial Officer under section 8c(14)(B) of the AMAA (7 U.S.C. § 608c(14)(B)) for violations of the Almond Marketing Order (7 C.F.R. pt. 981) is excessive within the meaning of the Excessive Fines Clause.

Moreover, Respondents contend that the civil penalty assessed against

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<sup>9</sup>*In re Daniel Strebin*, 56 Agric. Dec. 1095 (1997); *In re Onofrio Calabrese*, 51 Agric. Dec. 131 (1992), *aff'd sub nom. Balice v. United States Dep't of Agric.*, No. CV-F-92-5483-GEB (E.D. Cal. July 14, 1998), *printed in*, 57 Agric. Dec. 841 (1998), *aff'd*, No. 98-16766 (9<sup>th</sup> Cir. Feb. 8, 2000).

Respondents is not consistent with civil penalties assessed in cases that have been settled by alleged violators of marketing orders issued under the AMAA (Respondents' Remand Reply Brief at 3). However, the Judicial Officer has long held that consent orders are given no weight in determining the sanction in a litigated case.<sup>10</sup> In a case where the parties agree to the entry of a consent decision, there is generally no record or argument to establish the basis for the sanction. The sanction may appear to be less than warranted because of problems of proving the allegations of the complaint or because of unrevealed mitigating circumstances. Other circumstances, such as personnel and budget considerations and the delay inherent in litigation, may also cause the sanction in a consent decision to appear less severe than appropriate. Conversely, the sanction in a consent decision may seem more severe than appears warranted because of unrevealed aggravating circumstances. Thus, I do not find that sanctions agreed to by parties and embodied in consent decisions are relevant to the issue of whether a sanction assessed in a litigated case is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment.

Finally, a review of civil penalties assessed in other cases is of limited assistance in determining whether a civil penalty is excessive within the meaning of the Excessive Fines Clause.<sup>11</sup> Thus, even if I found that the civil penalty assessed against Respondents is disproportionate to civil penalties in similar cases, I would give that finding much less weight in determining whether the civil penalty assessed against Respondents is excessive within the meaning of the Excessive Fines Clause, than I give to the gravity of Respondents' violations and Respondents' culpability.

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<sup>10</sup>See *In re Onofrio Calabrese*, 51 Agric. Dec. 131, 155 (1992), *aff'd sub nom. Balice v. United States Dep't of Agric.*, No. CV-F-92-5483-GEB (E.D. Cal. July 14, 1998), *printed in*, 57 Agric. Dec. 841 (1998), *aff'd*, No. 98-16766 (9<sup>th</sup> Cir. Feb. 8, 2000); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 636 (1986), *aff'd*, 810 F.2d 916 (9<sup>th</sup> Cir. 1987); *In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1569 (1974); *In re Dean Witter & Co.*, 33 Agric. Dec. 11, 13 (1973).

<sup>11</sup>See *United States v. Emerson*, 107 F.3d 77, 81 n.9 (1<sup>st</sup> Cir.), *cert. denied*, 522 U.S. 814 (1997), in which the First Circuit states that a review of penalties in other cases is of limited assistance in judging whether a given fine exceeds constitutional bounds, as follows:

Emerson argues that in determining excessiveness we must consider whether the penalty imposed here is disproportionate to such penalties in similar cases, and offers in comparison several cases involving regulatory violations that he claims demonstrate the unfairness of his punishment. We note, firstly, that the proportionality concern in an excessive fines case is generally considered to be a question of "whether the fine imposed is disproportionate to the crime committed," *Harmelin v. Michigan*, 501 U.S. 957, 1009, 111 S.Ct. 2680, 2709, 115 L.Ed.2d 836 (1991) (White, J., dissenting), not whether a given fine is disproportionate to other fines imposed on other defendants. Although review of penalties in similar cases may be instructive in evaluating the range of penalties appropriate for a given crime, we think it of limited assistance in judging whether a given fine exceeds constitutional bounds.

### **Respondents' Ability to Pay**

Respondents contend that they do not have the ability to pay the \$205,000 civil penalty and that Respondents' ability to pay should be considered in determining the amount of the civil penalty (Respondents' Remand Brief at 4-6 and Exhibit B; Respondents' Remand Reply Brief at 4-5, Supplemental Declaration of Tom Collins, CPA in Response to Complainant's Brief, and Specifically the Affidavit of Terry W. Kaiser Re "Excessive Fines Clause"). Respondents state that many statutes authorizing civil penalties describe the factors an agency must consider in imposing civil penalties, including the violator's ability to pay. Respondents cite a number of cases in which the courts required consideration of a violator's ability to pay the civil penalty (Respondents' Remand Brief at 5). However, none of the cases cited by Respondents concern whether the Excessive Fines Clause of the Eighth Amendment requires consideration of the violator's ability to pay a civil penalty.<sup>12</sup> Complainant, citing *Badders v. United States*, 240 U.S. 391 (1916), agrees with Respondents that a respondent's ability to pay is a factor to be considered under the Excessive Fines Clause to determine whether a civil penalty is excessive, but contends that Respondents are able to pay a \$205,000 civil penalty (Complainant's Remand Brief at 2, 7, Affidavit of Terry W. Kaiser ¶ 4; Complainant's Remand Reply Brief at 6-7). However, *Badders* does not concern whether the Excessive Fines Clause of the Eighth Amendment requires consideration of the violator's ability to pay a civil penalty.

However, it does appear that courts consider a violator's financial condition and

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<sup>12</sup>Specifically, Respondents cite: *United States v. Anthony Dell'Aquila Enterprises & Subsidiaries*, 150 F.3d 329, 338-39 (3<sup>d</sup> Cir. 1998) (holding that, under the Clean Air Act, a violator's ability to pay must be considered in determining the amount of the fine because the Clean Air Act requires consideration of the economic impact of the penalty on the business); *Corder v. United States*, 107 F.3d 595, 597-98 (8<sup>th</sup> Cir. 1997) (stating that when determining the amount of a civil penalty to be imposed for violations of the Food Stamp Act of 1977, as amended, Congress generally directed Food and Consumer Services to exercise discretion so that the punishment will more closely fit the crime; this general direction is a signal that Food and Consumer Services should follow principals of fairness that have been clearly delineated in other laws, such as the Packers and Stockyards Act); *Merritt v. United States*, 960 F.2d 15, 17-18 (2<sup>d</sup> Cir. 1992) (stating that section 13(c) of the Shipping Act (46 U.S.C. app. § 1712(c)) requires the Federal Maritime Commission to consider the violator's ability to pay a civil penalty for violations of the Shipping Act and concluding that the Federal Maritime Commission erred by failing to require production of evidence and make findings regarding a violator's ability to pay the civil penalty); *First American Bank of Virginia v. Dole*, 763 F.2d 644, 651-52 (4<sup>th</sup> Cir. 1985) (stating that the quasi-criminal nature of civil penalties counsels caution and pause before resorting to such a drastic remedy); *FAA v. Landy*, 705 F.2d 624, 635 & n.15 (2<sup>d</sup> Cir.) (stating that the violator attacks the \$567,000 civil penalty for violations of the Federal Aviation Act as "grossly disproportionate" and "unreasonably harsh" under the circumstances, but "[w]e put aside [the violator's] Eighth Amendment claim, finding it frivolous in light of the Supreme Court's rulings in *Rummel v. Estelle*, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980), and *Hutto v. Davis*, 445 U.S. 947, 100 S.Ct. 1593, 63 L.Ed.2d 782 (1980) (vacating) *Davis v. Davis*, 601 F.2d 153 (4<sup>th</sup> Cir. 1979) (en banc)"), cert. denied, 464 U.S. 895 (1983)).

the effect of the civil penalty on that financial condition when determining whether a civil penalty is excessive within the meaning of the Excessive Fines Clause.<sup>13</sup>

Tom Collins, a certified public accountant acting on behalf of Respondents, estimated Respondents' net worth to be, at most, \$270,976 (Respondents' Remand Reply Brief, letter dated November 17, 1999, from Tom Collins to Brian C. Leighton). Terry W. Kaiser, a USDA compliance officer acting on behalf of Complainant, estimated Respondents' net worth to be \$1,413,429 (Complainant's Remand Brief at 7, Affidavit of Terry W. Kaiser ¶ 4). Mr. Collins has been a certified public account for 19 years and has been Mr. and Mrs. Saulsbury's certified public accountant for approximately 16 years (Respondents' Remand Brief, Declaration of Tom Collins, CPA In Support of Respondent's [sic] Brief Re "Excessive Fines Clause" ¶ 1). Mr. Kaiser is a compliance officer employed by the Agricultural Marketing Service, USDA, who was assigned to assist the Office of the General Counsel, USDA, "in investigating the financial assets held by Robert J. Saulsbury and Saulsbury Enterprises" on August 25, 1999 (Complainant's Remand Brief, Affidavit of Terry W. Kaiser ¶¶ 1-2). Mr. Kaiser's estimate of Respondents' net worth includes as assets, the civil penalty and assessment, which I ordered Respondents to pay in the May 7, 1996, Decision and Order and the "[p]resent value of unauthorized revenue and avoidance of RAC costs by sale of raisins to a Canadian customer, plus estimated interest accrued from 1988 to 1998" (Complainant's Remand Brief, Attachment to Affidavit of Terry W. Kaiser). These items, which Mr. Kaiser lists as assets with an estimated market value of \$741,932, are clearly not assets. Given the respective backgrounds of Messrs. Collins and Kaiser and their relative experience with Mr. Saulsbury's and Mrs. Saulsbury's finances and the apparent errors in Mr. Kaiser's estimate of Respondents' net worth, I give more weight to Mr. Collins' estimate of Respondents' net worth than to Mr. Kaiser's estimate of Respondents' net worth.

However, even using Mr. Collins' estimate of Respondents' net worth, \$270,976, Respondents are able to pay the \$205,000 civil penalty assessed against them. While I do find that Respondents' payment of the civil penalty may significantly damage Respondents' financial condition, I do not find that the amount of the civil penalty is so disproportionate to Respondents' circumstances that there is no realistic expectation that Respondents will be able to pay the civil penalty.

Moreover, Respondents' ability to pay the civil penalty is not dispositive of the issue of whether the civil penalty is excessive within the meaning of the Excessive

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<sup>13</sup> See generally *United States v. 25445 Via Dona Christa*, 138 F.3d 403, 409 (9<sup>th</sup> Cir. 1998) (stating that in assessing proportionality, the hardship to the defendant, including the effect of forfeiture on defendant's family or financial condition, should be considered); *United States v. \$69,292 In United States Currency*, 62 F.3d 1161, 1167 (9<sup>th</sup> Cir. 1995) (stating that in a civil forfeiture context, whether value of property is proportional to the culpability of the owner so that there is no violation of the Excessive Fines Clause requires consideration of, among other factors, hardship to defendant and defendant's family).



Fines Clause. Therefore, even if I found that Respondents were unable to pay the civil penalty, I would not reduce the civil penalty assessed in the May 7, 1996, Decision and Order, in light of the gravity of Respondents' violations, Respondents' high degree of culpability, the harm caused by Respondents' violations, and the maximum civil and criminal penalties that could have been assessed against Respondents.

#### **Respondent Robert J. Saulsbury's Health**

Respondents contend that Respondent Robert J. Saulsbury has a number of serious health problems and that Respondent Robert J. Saulsbury's health problems should be considered in determining whether the civil penalty is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment (Respondents' Remand Brief at 6, Exhibit A, and Exhibit B). Complainant contends that Mr. Saulsbury's health is not relevant to the issue of whether the civil penalty is excessive within the meaning of the Excessive Fines Clause (Complainant's Remand Reply Brief at 7).

Respondents support their contention that Mr. Saulsbury had serious health problems. However, Mr. Saulsbury's unfortunate death renders Respondents' argument moot. Even if Mr. Saulsbury was alive and the issue of his health was not moot, I would agree with Complainant's position that Mr. Saulsbury's health is not relevant to the issue of whether the civil penalty assessed against Respondents is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment. Respondents do not cite any authority for their contention that the health of one of the violators is a factor to be considered when determining whether a civil penalty is excessive within the meaning of the Excessive Fines Clause, and I can find no authority which supports Respondents' contention that the health of the violator is a factor to be considered when determining whether a civil penalty is excessive within the meaning of the Excessive Fines Clause. Therefore, even if Mr. Saulsbury was alive, I would not consider Mr. Saulsbury's health when determining whether the civil penalty, which I assessed in the May 7, 1996, Decision and Order, as modified by the United States District Court for the Eastern District of California, is excessive within the meaning of the Excessive Fines Clause.

#### **Burden on Robert J. Saulsbury and His Dependents**

Respondents contend that the burden the civil penalty would place on Respondent Robert J. Saulsbury and his dependents is a factor to be considered when determining whether a civil penalty is excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment (Respondents' Remand Brief at 2).

Again, due to Mr. Saulsbury's unfortunate death, the burden that the civil penalty would place on Mr. Saulsbury and his dependents is moot. Moreover, Respondents do not indicate what dependents would be burdened by a civil penalty imposed on Mr. Saulsbury, and Mr. and Mrs. Saulsbury did not claim any dependents on their joint 1997 and 1998 federal income tax returns, which Respondents attached to Respondents' Remand Brief.

#### **Order Requiring Payment to the Raisin Administrative Committee**

In the May 7, 1996, Decision and Order, I found that Respondents failed to pay the Raisin Administrative Committee \$557.33 in assessments for raisins handled in the 1988-1989 crop year, \$594.68 in assessments for raisins handled in the 1989-1990 crop year, and \$521.29 in assessments for raisins handled in the 1990-1991 crop year. Based on these findings, I ordered Respondents to pay the Raisin Administrative Committee \$1,673.30 in assessments, which Respondents had failed to pay for crop years 1988-1989, 1989-1990, and 1990-1991. *In re Saulsbury Enterprises, Inc.*, *supra*, 55 Agric. Dec at 20, 58. The Court, in *Saulsbury Enterprises v. United States Dep't of Agric.*, *supra*, does not indicate that my order that Respondents pay the Raisin Administrative Committee \$1,673.30 in assessments, which Respondents failed to pay in crop years 1988-1989, 1989-1990, and 1990-1991, is a civil penalty subject to the Excessive Fines Clause.

The Excessive Fines Clause of the Eighth Amendment does not apply to a monetary penalty whose purpose is other than punitive or penal.<sup>14</sup> The Order requiring Respondents to pay the Raisin Administrative Committee assessments Respondents were required to pay and failed to pay, is not punishment for Eighth Amendment purposes because the Order is only remedial and has no deterrent, rehabilitative, or retributive purposes. Moreover, even if I found that the Excessive Fines Clause applies to the Order requiring Respondents to pay the Raisin Administrative Committee, I would not find that the Order requiring Respondents to pay \$1,673.30 in assessments to the Raisin Administrative Committee is excessive within the meaning of the Excessive Fines Clause because proportionality is inherent in an order requiring a respondent to pay assessments which the respondent is required to pay and has failed to pay, and restitution of the exact amount owed by a respondent is inherently linked to the culpability of the respondent.<sup>15</sup>

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<sup>14</sup>See generally *Little v. C.I.R.*, 106 F.3d 1445, 1454-55 (9<sup>th</sup> Cir. 1997).

<sup>15</sup>See *United States v. Dubose*, 146 F.3d 1141, 1145-46 (9<sup>th</sup> Cir.) (stating that where the amount of restitution is geared directly to the amount of the victim's loss caused by the defendant's illegal activity, proportionality is built into the order; in a restitution context, because the full amount of restitution is inherently linked to culpability of the offender, restitution orders that require full

### **Findings and Conclusion Relevant to the Excessive Fines Clause**

I find: (1) Respondents' 205 violations of the Raisin Order over almost a 5-year period are grave violations of the Raisin Order; (2) Respondents are highly culpable for the violations; (3) Respondents' violations harmed the Raisin Administrative Committee, handlers subject to the Raisin Order, the United States government, consumers of raisins produced from grapes grown in California, the Secretary of Agriculture's implementation of the policies expressly stated in the AMAA, and the integrity of the Raisin Order; (4) the \$205,000 civil penalty assessed against Respondents is authorized by the AMAA and is approximately 10 per centum of the maximum civil penalty that could have been assessed against Respondents; (5) the \$205,000 civil penalty assessed against Respondents is consistent with civil penalties assessed in similar cases; (6) Respondents have the ability to pay the assessed civil penalty; and (7) Respondents' financial condition may be significantly damaged by the payment of the \$205,000 civil penalty, but the civil penalty is not so disproportionate to Respondents' circumstances that there is no realistic expectation that Respondents will be able to pay the civil penalty.

I conclude that the assessment of a \$205,000 civil penalty against Respondents, jointly and severally, is not excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment.

For the foregoing reasons, the reasons in *In re Saulsbury Enterprises*, 55 Agric. Dec. 6 (1996), the reasons in *In re Saulsbury Enterprises*, 56 Agric. Dec. 82 (1997) (Order Denying Pet. for Recons.), and the reasons in *Saulsbury Enterprises v. United States Dep't of Agric.*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999) (Order Granting in Part and Denying in Part Cross-Motions for Summary Judgment and Remanding Matter to USDA), the following Order should be issued.

### **Order**

Respondents, Robert J. Saulsbury and Saulsbury Enterprises, jointly and severally, are assessed a civil penalty of \$205,000 and are ordered to pay to the Raisin Administrative Committee \$1,673.30 in assessments for crop years 1988-1989, 1989-1990, and 1990-1991. The civil penalty shall be paid by certified check or money order, made payable to the Treasurer of the United States, and sent to:

Colleen A. Carroll  
United States Department of Agriculture  
Office of the General Counsel

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compensation in the amount of the loss are not excessive), *cert. denied sub nom. Dean v. United States*, 525 U.S. 975 (1998).

Marketing Division  
Room 2014-South Building  
1400 Independence Avenue, SW  
Washington, DC 20250-1417

The Raisin Administrative Committee shall be paid by certified check or money order.

The certified check or money order for the civil penalty shall be forwarded to, and received by, Colleen A. Carroll, and the certified check or money order for the assessments shall be forwarded to, and received by, the Raisin Administrative Committee, within 100 days after service of this Order on Respondents.

The United States District Court for the Eastern District of California has retained jurisdiction over this proceeding, pending the findings in this Decision and Order on Remand, and has instructed the parties to renew their motions for summary judgment before the Court on the issue of whether the civil penalty assessed against Respondents is or is not excessive within the meaning of the Excessive Fines Clause. Therefore, simultaneously with the issuance of this Decision and Order on Remand, I am filing a Stay Order which stays this Order pending proceedings for judicial review.

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